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No. 87-45

IN THE

Supreme Court of the United States

October 1987 Term

JAMES B. LUND and INGRID LUND,
Appellants,

v.

COUNTY OF HENNEPIN,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

APPELLANTS' BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

Original question presented was a three-tiered system of homestead market values and applying various percentages to each tier in Minnesota's ad valorem real estate tax system.

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ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

APPELLANTS' OBJECTION TO MOTION OF APPELLEE COUNTY OF HENNEPIN TO DISMISS OR AFFIRM

Appellants object to dismissal of their appeal herein on the ground the questions involved are substantial.

STATE STATUTE INVOLVED

This appeal raises the question of the validity of a provision of the Minnesota property tax laws (Minnesota Statute, 1984, Section 273.13, Subdivision 7).

This statute provides, in relevant part, that real estate used as a homestead is valued and assessed at the following rates: the first $30,000 of market value is valued and assessed at 17 percent; the next $30,000 of market value is valued and assessed at 19 percent; and the remaining market value is valued and assessed at 30 percent.

The property tax to be paid on a homestead is reduced by fifty-four percent of the tax imposed on the first $67,000 of the market value. The amount of the reduction shall not exceed $650. Minnesota Statute 1984, Section 273.13, Subdivision 15a.

STATEMENT OF FACTS

Appellants own homestead property in Minneapolis, Minnesota. This property was valued by the County Assessor at $148,800 as of January 2, 1983. Their property was taxed according to the provisions of Minnesota Statute, 1984, Section 273.13, Subdivision 7 as follows:

	ASSESSED AT
1st $30,000 of market value	17%
next $30,000 of market value	19%
remaining market value	30%

Reduced by 54% of tax imposed on first $67,000 of market value, not to exceed $650. Paid from state general revenue fund to local government. Minnesota Statute Section 273.13, Subdivision 15a. The Appellants challenged this taxation in a Petition to the Minnesota Tax Court. The Appellants contended that Minnesota Statute, 1984, Section 273.13, Subdivision 7 did not levy taxes uniformly on the same class of subjects in violation of the equal protection clause of the federal constitution. This contention was rejected in an order filed by the Minnesota Tax Court on October 30, 1985. Upon appeal to the Minnesota Supreme Court, the decision of the lower court was affirmed. 403 N.W. 2d 617 (Minn. 1987).

ARGUMENT

Minnesota case cited by appellee was not considered by the Minnesota Tax Court, except to state:

> "Philosophically we can agree with petitioner to the extent that all residential property should be taxed in the same way."

Originally appellant's case was on the basis of increasing percentages applied to different tiers of market value of homesteads. Upon appeal, the Chief Justice of the Minnesota Supreme Court added the homestead real estate tax question, the use of state general revenue funds to pay local governments for real estate tax revenue lost by reducing tax on lower valued homesteads, whether there was a constitutional limit on the percentage of fair market value upon which real estate taxes may be imposed and, if there is a constitutional limit, what is the proper method of computation.

The 1933 act Chapter 359 Minnesota Laws 1933 which was upheld in the case cited by appellee, *Apartment Operators Assn. v. City of Minneapolis*, 191 Minn. 365, 369, 254 N.W. 443, 445 (1934) provides:

> "All platted real estate * * * which is used for the purposes of a homestead, shall constitute class 3c and shall be valued and assessed at twenty-five (25) per cent of the true and full value thereof. Provided, if the true and full value is in excess of the sum of $4,000.00, the amount in excess of said sum shall be valued and assessed as provided for by class four (4) hereof. (Property coming within class 4 is valued and assessed at 40 per cent of its true value.)"

"...did not in fact provide for a system of two classifications of homesteads with the value assessed on a graduated scale. Rather, the legislature created, for the first time, a homestead exemption, one homestead exemption, for the purpose of real property taxation." *Lund v. Hennepin County*, 403 N.W. 2d 617, 621, (1987) (Wahl dissenting).

"If the constitutional phrase, 'equal on the same class of subjects,' is to mean anything, let us apply it...." *Lund v. Hennepin County, supra*, p. 624 (Yetka dissenting).

The problem of a "two tiered system" set forth in *Butte Community Union*, (Montana) 712 P 2d 1309, 1312, cites 86 Harv. L.R. 1, 17-20 "...a New Model for Equal Protection" sets forth at page 17 of the article this Court's mounting discontent with "Two Tiered Equal Protection" starting with *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, followed by *Police Dept. v. Mosley*, 408 U.S. 92.

Where benefit received and the burden imposed is palpably disproportionate, the tax is not only a taking without due process under the Fourteenth Amendment, but also an arbitrary form of classification in violation of equal protection and state uniformity standards. See *Allegheny County v. Monzo*, 500 A. 2d 1096.

Exemption from state taxation is only by amendment to the state constitution *Stearns v. Minnesota*, 179 U.S. 223, *Duluth & I.R. Ry., v. St. Louis County*, 179 U.S. 302 cited in 64 A.L.R. 1218.

CONCLUSION

The tiered system of Minnesota homestead real estate tax system violates equal protection clauses of the Fourteenth Amendment.

Respectfully submitted,

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